

STATE OF MICHIGAN
COURT OF APPEALS

In re HENINGBURG, Minors.

UNPUBLISHED
February 20, 2020

No. 349514
Wayne Circuit Court
Family Division
LC No. 18-001640-NA

Before: GLEICHER, P.J., and GADOLA and LETICA, JJ.

PER CURIAM.

The circuit court terminated respondent-mother’s parental rights to her now 11-year-old daughter ISH based on respondent’s failure to protect the child from physical and sexual abuse in the home and subsequent abandonment of the child. Respondent now challenges the evidentiary support for the statutory grounds underlying the termination decision and contends that termination of her parental rights was not in ISH’s best interests. We discern no error and affirm.

I. BACKGROUND

This appeal relates to the termination of respondent’s parental rights to two of her six children—DMH and ISH. DMH turned 18 on May 4, 2019, before the current appeal was filed. As DMH has reached the age of majority, there is no remedy this Court could provide respondent. Accordingly, any challenge to the termination of respondent’s parental rights to DMH is now moot and we may not consider it. *Garrett v Washington*, 314 Mich App 436, 449; 886 NW2d 762 (2016). We therefore focus our attention on respondent’s challenges to the termination of her parental rights to ISH.

Respondent is no stranger to the child protective system. Since her first child was born in 2001, Child Protective Services (CPS) has investigated 50 separate reports regarding respondent’s home, and substantiated 12. Unfortunately, respondent’s 17-year-old son, DNH, was sexually abused as a young child and despite years of therapy has continued to act out sexually and sometimes violently. During a 2010 CPS investigation, respondent herself reported that she walked in on DNH, who was naked from the waist down, bouncing a naked and then one-year-old ISH on his lap. ISH reported that DNH sexually penetrated her vagina with his penis when she was seven years old. Although respondent denied knowledge of the incident, ISH contradicted

her claim. ISH further alleged that DNH and her other older brother used to chase her down and hit her with tree branches and sticks.

In the spring of 2017, when ISH was eight years old, respondent sent the child to live with respondent's sister, Courtney Carr. Respondent executed a power of attorney for Carr over the child that would expire after six months. At the end of the six months, respondent did not retrieve ISH, but she also did not renew the power of attorney. Carr testified that respondent never provided financial support for ISH. Although respondent contended that she was in constant contact with Carr, Carr's husband, and ISH, Carr asserted that respondent did not visit and rarely called. Carr brought ISH to visit respondent a few times, but stopped visiting after she witnessed respondent give DNH a baggie of marijuana.

While ISH was in Carr's care, Carr's husband, Kevin Lee, sexually assaulted the child. Carr immediately reported the incident to law enforcement, Lee was arrested, and was subsequently jury convicted of five counts of first-degree criminal sexual conduct. Carr also filed for divorce. Despite this incident, ISH felt protected in her aunt's care and desired to remain in her custody.

The Department of Health and Human Services (DHHS) filed a petition on October 3, 2018, requesting that the court take jurisdiction over the child (and three of her siblings) and terminate respondent's parental rights. The court held a combined adjudication trial/termination hearing on December 18, 2018. The court exercised jurisdiction over ISH and her siblings and then found statutory grounds to terminate respondent's parental rights, specifically, MCL 712A.19b(3)(b)(i), (b)(ii), (g), and (j). In the spring of 2019, the court conducted a best-interests hearing over three days. At the close of the hearing, the court found it in ISH's best interests to terminate respondent's parental rights.¹

Respondent now appeals.

II. STATUTORY GROUNDS

Respondent challenges the statutory grounds underlying the court's termination decision. Pursuant to MCL 712A.19b(3), a circuit court "may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence" that at least one statutory ground has been proven by the DHHS. MCR 3.977(A)(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). We review for clear error a circuit court's factual finding that a statutory termination ground has been established. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013) (quotation marks and citation omitted).

¹ The court also terminated respondent's parental rights to DMH. However, the court did not terminate respondent's rights to the two sons involved in this case and they remain in her care. Respondent's other two children are in their father's custody.

“Clear error signifies a decision that strikes us as more than just maybe or probably wrong.” *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009).

The court terminated respondent’s parental rights under the following provisions of MCL 712A.19b(3):

The court may terminate a parent’s parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

(i) The parent’s act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent’s home.

(ii) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent’s home.

(g) The parent, although, in the court’s discretion, financially able to do so, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.

(j) There is a reasonable likelihood, based on the conduct or capacity of the child’s parent, that the child will be harmed if he or she is returned to the home of the parent.

There is no evidence that respondent personally abused ISH. Accordingly, we agree that termination of respondent’s parental rights to ISH could not be supported under factor (b)(i). However, clear and convincing evidence supported the court’s determination that ISH suffered physical and sexual abuse in respondent’s home and that respondent failed to protect her, supporting termination under factor (b)(ii). During a 2010 CPS investigation, respondent admitted that she caught her then six-year-old son engaged in an act of sexual touching with one-year-old ISH. To respondent’s credit, she has kept DNH involved in therapy throughout his life to address the after effects of his childhood sexual abuse. Despite these efforts, DNH sexually assaulted ISH when she was seven years old. ISH also described a pattern of physical abuse and torment perpetrated by her brother over the years and respondent’s refusal to correct the situation. Respondent testified that she protected ISH by never leaving her alone with DNH. Respondent asserted that there was always an adult caregiver in the home. One of these adult caregivers was presumably respondent’s live-in romantic partner, Bilal Hudson. A major theme in the termination proceedings was that Hudson had sexually abused respondent’s older daughter, DMH, and was likely the father of that child’s baby. The court was not satisfied with the adequacy of respondent’s protection plan, and we discern no error in that conclusion.

The evidence also sufficed to support termination under factor (g). Respondent initially provided proper care and custody for young ISH by placing the child with her sister with a power of attorney. However, respondent never reclaimed her child and yet failed to renew the power of attorney or to arrange a legal guardianship. Moreover, despite that respondent reported being employed during this time, she did not provide financial assistance to her sister for the care of ISH.

And termination was supported under factor (j). The court found that termination of respondent's parental rights to her son DNH was not in that child's best interests. DNH had physically and sexually assaulted ISH while both resided in their mother's home. Respondent had not developed a better plan to protect ISH from her brother. Accordingly, if ISH was returned to her mother's custody, she would be placed in great danger of further physical and sexual abuse.

III. BEST INTERESTS

Respondent further contends that termination of her parental rights was not in ISH's best interests because respondent had a full-time job and could financially provide for her child, was working on obtaining suitable housing, and had faithfully attended visits with ISH.² "Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012), citing MCL 712A.19b(5). "[W]hether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence." *Moss*, 301 Mich App at 90. The court should weigh all the evidence available to it in determining the child's best interests. *Trejo*, 462 Mich at 356-357. And we review the court's factual findings in this regard for clear error. *In re Brown/Kindle/Muhammad Minors*, 305 Mich App 623, 637; 853 NW2d 459 (2014).

Factors relevant to the best-interest determination include "the child's bond to the parent, the parent's parenting ability, [and] the child's need for permanency, stability, and finality," as well as the advantages of the foster home over the child's home with the parent. *Olive/Metts*, 297 Mich App at 41-42 (quotation marks and citations omitted). "The trial court may also consider a parent's history of domestic violence, . . . the children's well-being while in care, and the possibility of adoption." *In re White*, 303 Mich App 701, 714; 846 NW2d 61 (2014). The court must "consider the needs of each child individually." *White*, 303 Mich App at 714. Ultimately, "the focus at the best-interest stage [is] on the child, not the parent." *Moss*, 301 Mich App at 87.

ISH reported that she did not want to return to her mother's care and preferred to stay with her aunt. Although respondent claimed that she shared a strong bond with ISH, ISH indicated that she had not seen or heard from respondent for an extended period. During these proceedings, supervised parenting-time sessions were ordered and ISH attended. However, ISH remained aloof and a new parent-child connection was not forged. When asked, ISH described respondent as only

² Although placement with a relative generally weighs against termination, *In re Gonzales/Martinez Minors*, 310 Mich App 426, 434; 871 NW2d 868 (2015), respondent has not cited ISH's relative placement as a ground to overturn the termination.

“a little bit nice”; Carr was “nicer” and took care of her. ISH enjoyed going to school and playing with Carr’s daughter. She called Carr “mom.”

We agree that it is profoundly troubling that Carr allowed ISH to witness abuse in her home. Carr’s now-ex-husband (Lee) physically abused Carr, sometimes in front of the children. And ISH fell victim to sexual abuse at Lee’s hands. However, Carr acted quickly and decisively when she learned of the sexual abuse allegations: she reported Lee to law enforcement and cut off all contact with him. In comparison, respondent was aware that at least two of her prior live-in partners had sexually abused DMH and continued to allow those men to live in her home. And despite knowing that DNH had been sexually inappropriate with ISH in the past, respondent did not create an adequate plan to protect all her children. Ultimately, Carr now lives in a suitable home free of the danger of future abuse, while respondent still lives in a home with DNH who had physically and sexually abused ISH. ISH cannot return to respondent’s care under these circumstances.

Respondent accuses Carr of essentially kidnapping ISH and causing the rift in the parent-child relationship. Respondent contends that Carr and Lee prevented her from communicating with ISH and moved without providing a forwarding address and new phone number. There is no evidence that respondent ever contacted the authorities for assistance in regaining custody of ISH or to report an alleged “kidnapping.” By respondent’s own admission, ISH was better off with Carr until respondent could obtain suitable housing, something which DMH reported never occurred. In the end, this was a question of credibility and the court credited Carr’s testimony over respondent’s. We may not interfere with that judgment. *In re LaFrance*, 306 Mich App 713, 723; 858 NW2d 143 (2014).

We affirm.

/s/ Elizabeth L. Gleicher

/s/ Michael F. Gadola

/s/ Anica Letica